

REMARKS

A. Claim status

Claims 18, 19, and 21 have been allowed. Claims 5-7, 9-12, and 14-16 are rejected.

Applicant traverses this ground of claim rejection for the reason stated below.

B. Claim rejection under 35 U.S.C §102(b)

Claims 5-7, 9-12, and 14-16 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,457,898 to Fortin *et al.* ("Fortin *et al.*").

Applicant previously had amended claim 14 to require that the convex arch portion be formed from a single thickness of material. The examiner contended that the Fortin *et al.* metatarsal guard is being formed from a single layer/thickness, stating "The fact that the single [layer] thickness is folded over itself does not necessarily make it a plurality of layers/thicknesses, it is merely made from a single [layer] thickness which is folded." Applicant disagrees. The Fortin *et al.* metatarsal guard clearly includes more than one thickness or layer of material.

Applicant has amended claim 14 to clarify that the present invention requires "a convex arch portion having only a single unfolded thickness of material overlying the wearer's instep." Nothing in Fortin *et al.* teaches or suggests this element. To the contrary, Fortin *et al.* teaches that flap 22, which is formed from the second thickness of material, is required to distribute the load on tongues 21 upon impact by a falling object; it compensates for the weakness of the tongues 21 while allowing movement of the tongues 21 in response to movement of a wearer's foot. [Col. 3, lines 29-30 and 39-41.]

A proper claim rejection under 35 U.S.C. §102(b) requires that each and every element of the claimed invention be shown or taught in the cited reference. Fortin *et al.* does not teach or suggest every element of the claimed invention. Applicant therefore requests that this ground for claim rejection be withdrawn.

Claims 5-7, 9-12, 15, and 16 each is dependent on independent claim 14. Applicant respectfully submits that these claims are allowable at least for the reasons stated with respect to claim 14.

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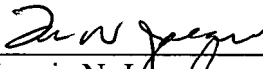
CONCLUSION

Applicant respectfully submits that all of the claims presented satisfy the statutory requirements for patentability and are patentable over the cited reference. Accordingly, applicant submits that the claims are in condition for allowance and requests that a Notice of Allowance be issued.

Respectfully submitted,

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I certify that this Response to Official Communication was mailed to Commissioner for Patents, PO Box 1450, Arlington, VA 22313-1450 by United States mail, first class postage prepaid, on this 29^h day of May, 2007.

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